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JAMES H. HENNEY,

CLERK

Supreme Court of the United States,
Motion to Advance
OCTOBER TERM, 1899.

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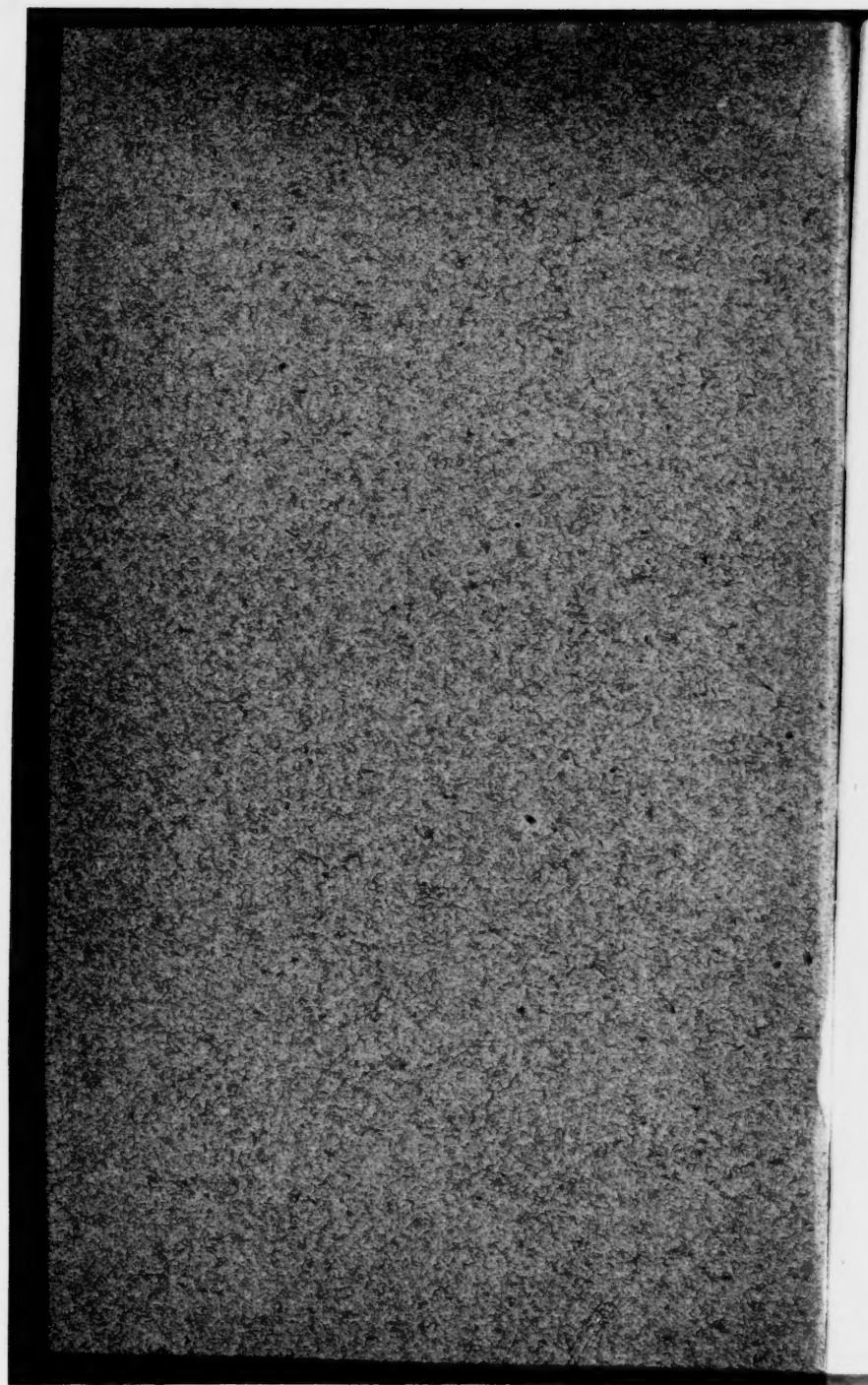
ADIRONDACK RAILWAY COMPANY,

Plaintiff in Error

against

THE PEOPLE OF THE STATE OF
NEW YORK.

MOTION TO ADVANCE.



The People of the State of New York do respectfully ask the Court to advance this case, not only because the Adirondack Park and the storage of water for the upper Hudson and the Champlain canal are threatened, but because the sovereignty of New York is doubted.

EDWARD WINSLOW PAIGE,
Of Counsel.

Come now the People of the State of New York and respectfully move the Court that this case be advanced for argument

IN THE SUPREME COURT OF THE UNITED STATES

.....Fourth of December, one thousand eight hundred and ninety-nine.

Statement.

The CONSTITUTION of New York contains the following :
Section seven of Article seven :

“ The lands of the State, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by ANY corporation, public or private, nor shall the timber thereon be sold, removed or destroyed.”

Section seven of Article one :

“ § 7. When private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the State, shall be ascertained by a jury, or by not less than three commissioners appointed by a court of record, as shall be prescribed by law.”

On the eighth of April, 1897, the legislature of New York passed a law which contained the following :

“ § 2. It shall be the duty of the forest preserve board and it is hereby authorized to acquire for the state, by purchase or otherwise, land, structures or waters or such portion thereof in the territory embraced in the Adirondack park, as defined and limited by the fisheries, game and forest law, as it may deem advisable for the interests of the state.

“ § 3. The forest preserve board may enter on and take possession of any land, structures and waters in the territory embraced in the Adirondack park, the appropriation of which in its judgment shall be necessary for the purposes specified in section two hundred and ninety of the fisheries, game and forest law, and in section seven of article seven of the constitution.

“ § 4. Upon the request of the forest preserve board an accurate description of such lands so to be appropriated

“ shall be made by the state engineer and surveyor, or the
 “ superintendent of the state land survey, and certified by
 “ him to be correct, and such board or a majority thereof
 “ shall indorse on such description a certificate stating
 “ that the lands described therein have been appropriated
 “ by the state for the purpose of making them a part of
 “ the Adirondack park; and such description and certi-
 “ cate shall be filed in the office of the secretary of state.
 “ The forest preserve board shall thereupon serve on the
 “ owner of any real property so appropriated a notice of
 “ the filing and the date of filing of such description and
 “ containing a general description of the real property be-
 “ longing to such owner which has been so appropriated;
 “ and from the time of such service, the entry upon and
 “ appropriation by the state of the real property described
 “ in such notice for the uses and purposes above specified
 “ shall be deemed complete, and thereupon such property
 “ shall be deemed and be the property of the state. Such
 “ notice shall be conclusive evidence of an entry and ap-
 “ propriation by the state.”

“ § 6. If the forest preserve board is unable to agree
 “ with the owner for the value of the property so taken or
 “ appropriated, or on the amount of damages resulting
 “ therefrom, such owner, within two years after the
 “ service upon him of the notice of appropriation as above
 “ specified, may present to the court of claims a claim
 “ for the value of such land and for such damages, and
 “ the court of claims shall have jurisdiction to hear and
 “ determine such claim and render judgment thereon.”

By the railroad law of New York a railroad company locates its line by filing a map of its line in a county and giving notice of the filing to all occupants of the land.

After fifteen days, if no application has been made to the Supreme Court of New York to change the line it be-

comes located, and the railroad company may then take the land by the right of eminent domain, by a proceeding which takes at least fifteen days, and which requires payment of the money to the owner of the land before the railroad company can enter upon it.

In 1881 the Adirondack Railway Company was incorporated to build and operate a railroad from Saratoga Springs to Ogdensburg on the St. Lawrence and of course through the middle of the North Woods. On the first of August, 1897, it owned and was operating a railroad from Saratoga northwesterly to North Creek.

Township 15, T. & C., lies north westwardly from North Creek and wholly within the bounds of the "forest preserve" as the same had been already established by law at the adoption of the provision of the Constitution quoted and it is also wholly within the bounds of the "Adirondack park."

In August, 1897, The Forest Preserve Board made an oral agreement to buy Township fifteen and certain additional land for ninety-nine thousand dollars.

On the eighteenth of September the Adirondack Railway Company filed in the counties of Hamilton, Warren and Essex, in all of which counties Township fifteen is, a map and survey for the extension of its railroad from North Creek across Township fifteen, and served the location notices.

On the first of October the owner was about to convey to the State Township fifteen and the other land, and to receive its money, when they were stopped by an injunction got by the Adirondack company.

They thereupon did this: they put up the deed in escrow, to be delivered when the injunction was dissolved. They made and delivered another deed—*excepting* the land described in the railroad survey—and delivered it.

This was the *first* of October.

On the *seventh* of October the Forest Preserve Board met again, and it having been reported to the Board that Mr. Justice McLaughlin, who had made the injunction, had declined to vacate it, the Forest Preserve Board took the strip of land described in the railway map, by the right of eminent domain, under the above-quoted law; that is to say—the state engineer at the request of the forest preserve board made a description of the strip of land and certified it to be correct—the forest preserve board indorsed on it a certificate stating that the lands described therein had been appropriated by the State for the purpose of making them a part of the Adirondack Park; filed the whole thing in the office of the secretary of state; afterwards served it on the owner, and paid the ninety-nine thousand dollars.

On the same day, but after the service on the owner as just stated the Adirondack Railway Company began condemnation proceedings against the same owner in the three counties, to take the same strip across Township fifteen.

The State went into possession and began the construction of a dam for the storage of water for the upper Hudson and the Champlain Canal.

And it brought this action to enjoin the Adirondack Company's condemnation proceedings. The trial resulted in such a judgment, which was reversed by the Appellate Division of the Supreme Court, but finally affirmed by the Court of Appeals of New York.

The Adirondack Company now brings the case here.

It has always claimed that by its location it had acquired a lien upon that part of Township fifteen, and that the proceedings by the forest preserve board were not due process of law within the meaning of the fourteenth amendment to the constitution of the United States.

It also claims that by its charter, which is an old one—the present company being a reorganized corporation—it has a binding contract with the State by which it has the right to build its road across the North Woods, and that the constitutional provision, already quoted, keeping railroads out of the North Woods, which was not adopted until 1894, violates the obligation of that contract.

Schenectady, ss. :

EDWARD WINSLOW PAIGE, being duly sworn, says, that evidence of the facts in the foregoing statement was given on the trial and is contained in the record.

EDWARD WINSLOW PAIGE.

Sworn before me this thir- }
teenth October, 1899. }

J. S. LANDON,

J. S. C.

SIR :

You will take notice that the above motion will be made to the Supreme Court on the fourth day of December 1899.

Yours very truly,

EDWARD WINSLOW PAIGE,

Attorney.

TO R. BURNHAM MOFFAT, Esq.,

Attorney for Plaintiff in Error.